

# The Treasury

## Reserve Bank Act Review - Deposit Takers Bill Information Release

April 2021

This document has been proactively released by the **Hon Grant Robertson, Minister of Finance** on the Treasury website at

<https://treasury.govt.nz/publications/information-release/reserve-bank-act-review-deposit-takers-bill>

### Cabinet Document Details

Title: **Cabinet Paper DEV-21-SUB-0077: Reserve Bank Act Review - Deposit Takers Bill: The Framework for the Regulation and Supervision of Deposit Takers (Paper 2 of 4)**

Date: **14 April 2021**

Creator: Office of the Minister of Finance

**No information has been withheld**

### Copyright and Licensing

Cabinet material and advice to Ministers from the Treasury and other public service departments are © **Crown copyright** but are licensed for re-use under **Creative Commons Attribution 4.0 International (CC BY 4.0)** [<https://creativecommons.org/licenses/by/4.0/>].

For material created by other parties, copyright is held by them and they must be consulted on the licensing terms that they apply to their material.

### Accessibility

The Treasury can provide an alternate HTML version of this material if requested. Please cite this document's title or PDF file name when you email a request to [information@treasury.govt.nz](mailto:information@treasury.govt.nz).

Chair,

Cabinet Economic Development Committee

## **Reserve Bank Act Review – Deposit Takers Bill: The Framework for the Regulation and Supervision of Deposit Takers (Paper 2 of 4)**

### **Proposal**

- 1 This paper is one of a suite of four papers on Phase 2 of the Review of the Reserve Bank of New Zealand Act 1989 (the Review). This paper presents proposals for the framework for regulating and supervising deposit takers for inclusion in a Deposit Takers Act (DTA). It should be read in conjunction with the *Overview* paper (Paper 1).

### **Executive Summary**

- 2 I am seeking Cabinet decisions on the following policy issues relating to the DTA:
  - 2.1 **Purposes and principles** – I propose a set of statutory purposes and decision-making principles to further clarify the Reserve Bank’s new overarching financial stability objective, which is to protect and promote the stability of New Zealand’s financial system. Together, these elements will guide the application of prudential powers.
  - 2.2 **The regulatory perimeter** – I propose a new prudential regulatory regime for firms that are in the business of ‘borrowing and lending’. This will include banks, credit unions, building societies, finance companies, and some wholesale funded lenders. The Reserve Bank would establish a policy on which deposit takers could call themselves ‘banks.’ Designation and exemption powers would provide the Reserve Bank with significant flexibility in applying the framework, as is the case with other financial regulatory regimes.
  - 2.3 **Standards and licensing** – Cabinet has previously agreed in-principle [DEV-MIN-19-0346 refers] that standards would be the primary tool for imposing prudential requirements on deposit takers, and that deposit takers will be required to obtain a licence from the Reserve Bank in order to carry on the business of borrowing and lending. I propose that the DTA clarify the scope of the Reserve Bank’s authority to impose standards and the process that the Reserve Bank will follow for imposing prudential standards. I propose that the Reserve Bank’s

ability to impose lending standards over particular types of property will be constrained by the relevant regulations made by Order in Council. I also propose that the Reserve Bank would be required to follow a process for licensing deposit takers.

- 2.4 **Holding directors accountable** – Due to the high social and economic costs of imprudently run deposit-taking institutions, I propose that directors would have an ongoing and positive duty to ensure that there are adequate systems, processes and policies in place. There will be pecuniary penalties for breaches of this duty.
- 2.5 **Supervision and enforcement** – I propose that the Reserve Bank would be empowered with strengthened supervisory tools, as well as a more graduated enforcement and penalty framework with a broader range of potential sanctions (for example, statutory public notices, infringement fees, enforceable undertakings). Penalties will be rebalanced towards civil pecuniary penalties, rather than criminal offences.
- 2.6 **Associated persons** – I propose that the Reserve Bank would have a number of powers with respect to associated persons, who are entities that have a close relationship with a licensed deposit taker. These powers would include the ability to collect information, set lending standards, and use enforcement and crisis management tools.
- 2.7 **Appeal rights** – I propose a system of appeal rights to act as a procedural safeguard and accountability mechanism. This will ensure parties whose rights or interests are affected by the Reserve Bank are afforded a right of recourse to challenge that decision. The proposed system of appeal aims to strike the right balance between protecting the interests of affected parties and enabling the Reserve Bank to pursue its statutory mandate efficiently and effectively.
- 2.8 **Miscellaneous matters** – I also propose that some provisions in the existing law are carried across and consolidated into the new DTA.

### **Purposes and principles of the Deposit Takers Act**

- 3 Legislative purposes and objectives help to communicate the policy intent of the legislation. They provide statutory criteria on which to base the exercise of regulatory powers and undertake statutory functions and act as a guide to interpret the intent of Parliament, while also providing a basis against which to assess the performance of an entity and hold it to account.
- 4 The Reserve Bank of New Zealand Bill (RBNZ Bill) will be introducing a new primary financial policy objective for the Reserve Bank as prudential regulator – to protect and promote financial stability. This objective is not an end in itself, but rather a means of supporting the overarching statutory purpose of the RBNZ Bill – to promote the prosperity and well-being of New Zealanders and contribute to a sustainable and productive economy.

- 5 On its own, the primary objective, to protect and promote financial stability, does not provide sufficient clarity to the Reserve Bank regarding the outcomes Parliament expects it to achieve under the DTA.
- 6 The proposed statutory purposes for the DTA have been designed to articulate what financial stability means in the context of the regulation and supervision of deposit takers. The proposed purposes for the DTA are:
  - 6.1 the promotion of the safety and soundness of deposit takers;
  - 6.2 the promotion of the public confidence in the financial system;
  - 6.3 the mitigation of risks that arise to and from the financial system.and, in doing so, contribute to protecting and promoting the stability of New Zealand's financial system.
- 7 The specification of financial stability in this way makes clear that the Reserve Bank should undertake its prudential function in a way that addresses the build-up of systemic risk in the financial sector, while focussing on individual institutions. While New Zealand's deposit taking sector is heavily concentrated and smaller entities do not pose the same risk to New Zealand's financial system compared to the big-four Australian-owned banks, the introduction of deposit insurance implies the Reserve Bank should direct an appropriate degree of attention to all entities within the prudential perimeter to manage moral hazard and the potential call on the deposit insurance fund from firm failure.
- 8 Legislative clarity on how the Reserve Bank should undertake its statutory mandate for financial stability is also provided for in the decision-making principles. The principles proposed are designed to guide the exercise of powers under the DTA, and to ensure that a range of factors are taken into account by the Reserve Bank when pursuing the statutory objectives. This includes ensuring that considerations other than financial stability are taken into account (for example, efficiency-related considerations) and that longer-term risks are well-managed (for example, the risks associated with climate change).
- 9 I note that there has been feedback from stakeholders expressing concern about the role of efficiency (and related concepts) within the legislative hierarchy. However, I remain comfortable with the proposed model, with a singular objective relating to financial stability, supported by decision-making principles. These principles will bring a focus on efficiency concepts (such as competition, proportionality, minimising compliance costs, and long-term risk).
- 10 Some other stakeholders also expressed concern that the RBNZ Bill's overarching purpose tied to well-being did not seem to resonate or flow through to the DTA. However, the overarching well-being purpose is an important part of the overall legislative hierarchy.

## The regulatory perimeter

- 11 Cabinet has made an in-principle decision to bring the registered bank and licensed non-bank deposit-taker (NBDT) regulatory regimes together into a single 'licensed deposit taker' framework [DEV-MIN-19-0161 refers]. The regulatory perimeter for this new regime will identify the persons or entities that powers can be applied to, and that the functions relate to. A well-demarcated boundary allows a regulator to assess who can and cannot perform the relevant regulated activity, while providing the focus for regulatory actions on the part of the regulator.
- 12 I am proposing that the regulatory perimeter focus on firms that are in the business of 'borrowing and lending' (subject to the exclusions outlined below). This perimeter would capture all firms currently captured under the registered bank regime or required to be licensed as an NBDT, including banks, credit unions and building societies. All licensed deposit takers would be licensed and supervised by the Reserve Bank and subject to the same disclosure, supervision and governance exclusions under the Financial Markets Conduct Act that currently apply to registered banks.

### *Finance companies*

- 13 The proposed regulatory perimeter for the DTA would also capture firms that do not take on-call deposits or offer transactional services, but that issue other types of debt securities to retail investors (often referred to as finance companies). These retail-funded finance companies are currently required to be licensed as NBDTs.
- 14 A key issue for the most recent round of public consultation was how finance companies should be regulated under the DTA, in particular whether:
  - 14.1 finance companies should be licensed as 'deposit takers' and eligible to take insured deposits; or
  - 14.2 a separate licence category for 'regulated debt issuers' should be established that enables these firms to issue some retail debt securities (e.g. longer-dated retail bonds or debentures) but not take insured deposits.
- 15 Stakeholders were split on whether the establishment of a separate licence category would be desirable. Some, including finance companies, were not in favour of its establishment, preferring to be licensed as deposit takers and have access to deposit insurance. They argued that few additional regulatory requirements (relative to the current requirements under the Non-Bank Deposit Takers (NBDT) Act) would be necessary to manage moral hazard risks associated with their access to deposit insurance and that such access would be important in allowing them to continue to attract funding. Others supported the establishment of a separate licence on the basis that it would allow for a more differential approach to higher risk/return entities and avoid moral hazard risks.

- 16 I consider that any benefits associated with a separate licence category are outweighed by the desirability of a simple, consistent and coherent regulatory framework for all deposit takers. This is particularly true given the small size of the current finance company sector, which currently consists of only six firms with assets around \$230 million. Under this approach finance companies will be fully inside the deposit taker perimeter and permitted to offer insured deposit products, with licensing requirements, prudential supervision and risk-based pricing used to manage any moral hazard risks.

#### *Wholesale funded lenders*

- 17 Another key issue for the regulatory perimeter has been the extent to which wholesale funded lenders should be captured, noting that they generally present less significant financial stability risks than retail deposit takers.
- 18 I recommend an approach that captures those lenders that offer wholesale deposit accounts (such as wholesale banks), but not those who solely raise funds from certain other wholesale sources (such as securitisers and others who raise funds on wholesale capital markets). While wholesale depositors are better placed to manage and assess risks, there would still be significant externalities associated with the loss of access to wholesale deposit accounts in the event of a failure. These risks are lower than would be the case for a retail deposit taker, but the flexibility of the regulatory system will allow for regulatory requirements to be appropriately calibrated to reflect this.
- 19 I am seeking delegated authority to finalise the details of this approach, including the scope of wholesale exclusions, which I expect to cover certain categories of wholesale borrowing (such as from financial institutions or associated persons, or issuing negotiable debt instruments). While further refinement of this approach will occur over the drafting process, I expect that it will largely capture the same set of entities required to be registered/licensed under the current RBNZ Act and NBDT Act.

#### *Restricted words*

- 20 I propose that a financial service provider that is not licensed as a deposit taker may not hold itself out to be a licensed deposit taker. I also propose that no financial service provider may use the words 'bank', 'banking' and 'banker' when carrying on activities in New Zealand, except for licensed deposit takers, that have been authorised by the Reserve Bank to use these words.
- 21 These proposals reflect that the regulatory and supervisory approach to smaller deposit takers may be less intensive than that applied to banks and that many small deposit takers have substantially lower credit ratings than registered banks. The regime will also capture finance companies that do not offer the same range of services typically offered by a bank. Retaining a restriction on the use of the word 'bank' should provide additional comfort to the Reserve Bank in adopting a differentiated approach to these firms, which

will be particularly important for the transition of the smaller NBDTs into the new regime.

### *Perimeter flexibility*

- 22 The Reserve Bank's broader financial stability and compliance functions will require it to monitor the activities of an 'outer perimeter' of non-deposit-taking lenders for financial stability risks and/or instances of unlicensed entities engaging in restricted activities. This monitoring would support the identification of financial stability risks outside of the deposit taking sector, as well as instances of regulatory arbitrage and breaches of the DTA by unlicensed entities. In addition to the DTA providing for information gathering powers in relation to these firms, officials are working with Ministry of Business, Innovation and Employment (MBIE) on the use of the Financial Service Providers Register to collect information on these lenders.
- 23 The outer perimeter will also need to be supported by tools providing the Reserve Bank with flexibility in how it approaches firms and business models near to the deposit taking boundary. I propose that the Reserve Bank should be able to designate individual entities as deposit-takers where they are providing services that have the economic substance, but not the legal form, of deposit taking. This should discourage regulatory arbitrage and encourage entities that are operating just outside the perimeter to engage with the Reserve Bank.
- 24 I also propose that the Reserve Bank should be able to exempt an entity or class of entity from requirements that are unnecessary or unjustified in relation to that entity's or class' business model and operations. This would provide the Reserve Bank with significant additional flexibility in applying the framework, particularly in responding to new and innovative business models that may not have been anticipated in the legislation. Within reasonable limits, the intention is that the use of exemptions would be part of a flexible regime, rather than a reserve power that would only be used in exceptional circumstances.

### **Standards and licensing**

- 25 A key design question for the DTA is how prudential requirements will be set, and by whom. Currently the Reserve Bank makes prudential rules for banks mainly through imposing Conditions of Registration (CoRs), whereas prudential requirements for NBDTs are primarily set via regulations. Key concerns with these approaches include a lack of oversight and transparency in relation to bank CoRs, and the lack of regulatory independence associated with the NBDT prudential requirements being set via regulations.
- 26 The technical nature of prudential requirements and the long-term nature of costs and benefits mean that most prudential requirements are best set by the Reserve Bank, at arm's length from government. This aligns with international best practice, as articulated in the Basel Core Principles for Effective Banking Supervision (the 'BCPs').

- 27 Cabinet has agreed in principle that ‘standards’, as a secondary legislative instrument administered by the Reserve Bank, will become the primary tool for imposing prudential requirements on deposit takers. There will be a high degree of flexibility to tailor standards to individual deposit takers and classes of deposit takers [DEV-19-MIN-0346 refers]. I propose that primary legislation will provide clarity over the specific areas where the Reserve Bank may impose standards, with the scope of standards able to be expanded over time on the recommendation of the Minister of Finance through regulations via an Order in Council.
- 28 The prudential framework will require the flexibility to deal with all deposit taking institutions, from very small NBDTs to the largest banks. This will mean the Reserve Bank should be able (and expected) to construct different rule sets for different classes of deposit taker, or one or more specified licensed deposit takers, that are proportionate to the risks involved. I propose that the framework will also provide discretion for the Reserve Bank to calibrate institution-specific requirements within a given standard through licence conditions or exemptions to reflect the underlying risk profile of that institution (‘supervisory adjustment’).<sup>1</sup> The Reserve Bank would also be able to collect information and set lending standards for non deposit taking lenders, including for associated persons of deposit takers where they are a non deposit taking lender.
- 29 I also propose a number of process and accountability requirements which would apply to the development of standards, including consultation with the Council of Financial Regulator (CoFR) agencies, public consultation and publication of a Regulatory Impact Statement (RIS). The RIS must also demonstrate how the board of the Reserve Bank has had regard to the *Financial Policy Remit* issued by the Minister of Finance.<sup>2</sup>
- 30 I propose that the DTA will explicitly provide for the Reserve Bank to set lending standards. However, the permitted scope of any lending standards will be set out in regulation, with the standard itself containing the specific calibration. I am proposing that the permitted scope of the regulations be confined to the types of lending (e.g. residential mortgage, rural and commercial property), leaving the types of borrowers (e.g. owner-occupiers, investors) the types of macro-prudential instruments used (e.g. LVRs, debt-to-income limits) to be set by the relevant standard. In addition, I am proposing that such regulations be made by the Governor General by Order-in-Council on the advice of the Minister of Finance after consultation with the Reserve Bank.
- 31 The decision-making process associated with ‘macro-prudential policy’, which is designed to mitigate the build of systemic risk in the financial system, is proposed to be the same as for any prudential requirement – i.e. the

---

<sup>1</sup> For example, within a capital standard, the Reserve Bank would be empowered to impose an additional buffer of regulatory capital on an entity if it were concerned, for example, with how risks were being managed or other aspects of the entity’s operations.

<sup>2</sup> More information on the Financial Policy Remit is outlined in Paper 1.



responsibility of the Reserve Bank board, having had regard to the *Financial Policy Remit* and the specific process requirements laid out in primary legislation. The Reserve Bank's ability to impose lending standards over particular types of property, and through particular tools, will be constrained by the relevant regulations made by Order in Council.

- 32 As part of its current approach to interaction with the Government, the Reserve Bank aims to keep the Minister of Finance informed of its regulatory policy agenda and of significant policy changes. I propose that this process be formalised by a statutory requirement in the DTA for the Reserve Bank to inform the Minister of Finance of key changes in prudential policy.
- 33 All regulated entities will need to obtain a licence from the Reserve Bank to undertake the business of borrowing and lending. The DTA will set out the relevant criteria for licensing a potential applicant, as well as the specific process requirements. I propose the Reserve Bank will consult with the FMA on licensing decisions. This is in line with the aim of encouraging greater coordination and cooperation by financial regulators, including by giving a statutory role to the Council of Financial Regulators (CoFR) in the Reserve Bank Bill. I propose that the Reserve Bank will have powers to establish licensing conditions, specific to licensed deposit takers. It is anticipated that licensing conditions may be used to apply to standards and relate to the licensing matters and the types of conditions that may be imposed under the Non-bank Deposit Takers Act 2013 and Insurance (Prudential Supervision) Act 2010.
- 34 Licensing criteria will include fit and proper requirements for directors and senior managers of deposit takers. Fit and proper requirements are designed to help ensure that directors and senior management have the requisite skills, experience and integrity to perform their roles. I propose that the framework for fit and proper requirements and procedural protections in the DTA should be along the lines of that for insurers under the Insurance Prudential Supervision Act 2010 (IPSA), with the detail of the requirements specified in a prudential standard.

### **Holding directors accountable**

- 35 Cabinet has previously agreed that the accountability framework for directors of deposit takers be enhanced by imposing positive on-going duties on directors [DEV-19-MIN-0346 refers]. This will support how banks and other deposit takers provide assurance that they are prudently managing risks to both the Reserve Bank as prudential regulator, and to external stakeholders.
- 36 Directors of registered banks are currently the focal point for the individual accountability provisions in the Reserve Bank of New Zealand Act 1989. They are faced with criminal liability for making false and misleading attestations in a bank's public Disclosure Statement. However, there are a number of drawbacks in the current approach to this 'self-discipline': the disproportionate focus on criminal liability; the point-in-time nature of the director obligation,

and the lack of guidance from the Reserve Bank around what constitutes adequate risk management.

- 37 I propose that directors would have a positive and on-going duty to ensure there are adequate systems, processes and policies in place to ensure the entity complies with its obligations. There would be a pecuniary penalty for breaches of this duty by directors. There would be protections for directors in the form of a defence for a breach of this duty, if they could show they took reasonable steps to meet their obligations. In addition, directors would be able to take out personal insurance against the potential penalty for such breaches. The entity itself would not be able insure or indemnify the director. This is to ensure the incentive appropriately lies on the director personally, rather than the company.
- 38 Directors of licensed deposit takers would also be liable for a civil pecuniary penalty if false or misleading information is given to the Reserve Bank or publicly disclosed by a deposit taker.
- 39 Cabinet has also previously agreed [DEV-MIN-19-0346 refers] in principle, subject to further advice from officials that a wider accountability regime be established for directors and senior executives of deposit takers and insurers. This regime should be integrated across the two 'peaks' of New Zealand's regulatory system (i.e. prudential and market conduct). This work will be progressed outside the Phase 2 Review. It may require future amendments to the DTA at the point that this more encompassing accountability regime is implemented.

### **Supervision and enforcement**

- 40 Supervision and enforcement are tasks undertaken by a prudential authority to monitor the financial health of regulated entities, verify information provided by regulated entities, assess compliance with formal regulatory requirements, and to effect corrective action for non-compliance or emerging risks and concerns.
- 41 There are significant gaps in the Reserve Bank's supervision and enforcement framework, including the limited independent verification of a regulated entity's prudential information, the lack of a comprehensive power for on-site inspections, and a limited enforcement toolkit with a disproportionate focus on criminal penalties.
- 42 I propose that the DTA will provide the Reserve Bank with strengthened supervisory tools, as well as a more graduated enforcement and penalty framework with a broader range of sanctions that provided by the current Reserve Bank Act. These powers will be provided within a framework that promotes a legitimate use of discretion, including clear process requirements and appeal rights as appropriate.

### *Supervisory powers*

- 43 I propose that the Reserve Bank would have a suite of powers to enable it to effectively monitor and supervise the financial sector in the interests of financial stability. This would include:
- 43.1 powers to request information from deposit takers;
  - 43.2 a requirement on licensed entities to report breaches of their obligations to the Reserve Bank;
  - 43.3 a power to require a deposit taker to produce a report on a particular matter;
  - 43.4 a search power, which would require a warrant.
- 44 The Reserve Bank would also have a power to enter and remain on the premises of licensed entities (including insurers) for the purpose of an on-site inspection. This will not require advance notice, or a warrant. When undertaking an on-site inspection, the Reserve Bank will be able to ask questions, and to see documents. This will provide assurance that firms are meeting their obligations, and allow the Reserve Bank to proactively verify information provided by licensed entities. This power would not function as a 'search and seizure power.'
- 45 The use of these powers would be subject to appropriate limitations, such as restrictions on compelling privileged or self-incriminatory information.
- 46 To the extent possible, the powers that the Reserve Bank would use to collect information and supervise, such as its information gathering and on-site inspection powers, would be consolidated within the RBNZ Bill along with related provisions.
- 47 The public consultation included questions about the possibility of an inspection power for the FMA, for the purpose of alignment between the twin peaks regulators. MBIE intends to undertake further targeted consultation to refine its thinking on this issue. Subject to this consultation, MBIE will seek final policy decisions on this power through the second tranche of DTA policy decisions.

### *Enforcement powers*

- 48 I propose that the Reserve Bank's enforcement tools would include powers to:
- 48.1 require certain information to be kept confidential for a period of time;
  - 48.2 require deposit takers to publicly display notices issued by the Reserve Bank;
  - 48.3 require deposit takers to create or implement remedial plans;

- 48.4 enter into an enforceable undertaking with a deposit taker, and allow the Reserve Bank to seek enforcement of this agreement through the High Court.
- 49 The Reserve Bank would also have a broader power to issue directions to licensed entities. This power would be able to be used in circumstances where an entity is non-compliant, or is likely to be non-compliant, with an obligation under the prudential legislation or a standard. The direction could entail anything required to remedy the non-compliance, or mitigate potential harm from that non-compliance.
- 50 This direction power would also be used in crisis management scenarios where there is concern as to the ongoing viability of an institution. This is discussed further in Paper 4 on crisis management and resolution.

### *Penalties*

- 51 I propose that the DTA would set out the liability of entities and individuals for non-compliance with their prudential obligations. This would include a significant civil pecuniary penalty for breaches of prudential standards by deposit takers, and criminal offences for more egregious and intentional wrongdoing. This is in line with the previous in-principle Cabinet decision to rely on civil pecuniary penalties, rather than criminal offences, as these are seen as more appropriate in the regulatory context. Other persons might also be liable for penalties if they are accessories to the offence. Civil pecuniary penalties would be paid to the Crown, not the Reserve Bank.

### **Associated persons**

- 52 Associated persons are entities that have a relationship with a primary entity, in this case a licensed deposit taker, and can include holding/subsidiary relationships, relationships created through managerial decision-making, or relationships built on delegated functions (e.g. outsourcing). Risks to the soundness of a deposit taker can be generated by the activities of associated persons. It is important that the Reserve Bank has sufficient tools to monitor and manage these risks.
- 53 I propose that the Reserve Bank would be able to set and enforce reporting and lending standards to associated persons who are lenders outside the regulatory perimeter, that have been prescribed via regulations. This will capture associated persons that are non-deposit taking lenders. The Reserve Bank would not otherwise be able to set standards for associated persons.
- 54 I am also proposing that the Reserve Bank be able to issue directions to associated persons in some circumstances. This is covered in more detail in Paper 4 on crisis management and resolution.

## Appeal rights

- 55 A system of appeal acts as a procedural safeguard and accountability mechanism to ensure that parties whose rights or interests are affected by the Reserve Bank, are afforded a right of recourse to challenge that decision. Appeal rights ensure decisions are in accordance with the law, and incentivise the Reserve Bank to make decisions that are of the highest possible quality. However, the system of appeal within the prudential framework needs to strike the right balance between protecting the interests of affected parties, versus enabling the Reserve Bank to pursue its statutory mandate efficiently and effectively.
- 56 I propose that the Reserve Bank's standard-setting, exemptions, and designation powers would be subject to judicial review, which would allow applicants to challenge the process by which decisions are made (in particular, whether the Reserve Bank acted within its powers and consistently with the legal framework). As secondary legislation, these powers of the Reserve Bank would be subject to scrutiny by Parliament via the Regulations Review Committee, and can be disallowed by the House in certain circumstances. The DTA will also specify appropriate procedural safeguards for the exercise of these powers.
- 57 The DTA will introduce a range of decision-making powers that would be applied to individual regulated entities or persons, such as licensing powers and enforcement actions. In addition to these powers being subject to judicial review, I propose that the DTA would, where appropriate, provide for a right of appeal if the rights or interests of a particular person are affected by an administrative decision.<sup>3</sup> In general, the limits on appeal rights reflect the need for certainty, including potential risks to financial stability, and the expertise of the decision maker.
- 58 I propose that:
- 58.1 an appeal enabling the merits of a decision to be re-examined through an assessment of questions of fact (a 'merits review') would be provided for fit and proper decisions in relation to directors and senior employees, and decisions to not grant deposit taker licences;<sup>4</sup>
  - 58.2 decisions by the Reserve Bank that affect the rights and interests in relation to an initial licence (i.e. conditions of licence, approvals to carry on certain activities) would be limited to questions of law;
  - 58.3 decisions by the Reserve Bank in relation to enforcement or direction would have no formal appeal rights attached, other than the inherent

---

<sup>3</sup> There are a number of decision-making powers for which existing legislation sets out the procedure for the conduct of the proceedings, including appeal rights. This includes the Search and Surveillance Act 2012 and the Criminal Procedure Act 2011. Civil and criminal penalties are court ordered remedies that are automatically subject to appeal rights under rules of civil and criminal procedure

judicial review power of the High Court, which encompasses questions of law.

- 59 Appeal rights for decisions made by the resolution authority will be considered once the no creditor worse off framework has been confirmed. Officials consider that appeals should likely be limited to no creditor worse off compensation.
- 60 Civil pecuniary penalties and criminal penalties, which are court ordered remedies, are automatically subject to appeal rights under rules of civil and criminal procedure.

### **Miscellaneous and procedural matters**

- 61 This paper also seeks agreement to carry across some provisions from the current prudential legislation, these being provisions relating to trans-Tasman cooperation and covered bonds. Similarly, there are some insurance related provisions relating to financial strength ratings that should also be included in the DTA. I propose that all of these provisions should be included subject to necessary drafting changes or modifications.

### **Next steps**

- 62 Following Cabinet decisions on this suite of papers, the process of drafting the legislation will commence. Introduction into the House is anticipated in late 2021. A more detailed timeline is included in Paper 1.
- 63 I am also proposing a Ministerial delegation for further policy matters that may arise prior to the completion of the draft Bill. This would apply to further policy decisions required to be able to finalise the drafting instructions, and would be taken jointly with relevant Ministers where matters affect their portfolios. Other matters may require Cabinet decisions. Further discussion and recommendations are included in Paper 1.
- 64 Once the DTA has passed into law, there will also be a substantial work programme to implement the new prudential framework for deposit takers. A key part of this will be in the transition to the new standards regime, with significant work required to develop all the new standards for prudential regulation. Work will also be needed to adapt the current conditions of registration, the Banking Supervision Handbook, and the non-bank deposit taker rulebook into standards.

### **Financial Implications**

- 65 The decisions in this package of Cabinet papers will have direct financial implications for the Reserve Bank as New Zealand's prudential regulator. This would include, for example, increasing the operating expenditure of the Reserve Bank to support a broader set of responsibilities associated with a new deposit insurance function. In addition, a significant increase in the resourcing and funding of the Reserve Bank is required to support a more intensive supervisory and enforcement model to align with the legislative

proposals in this paper. There will also be transition costs tied to implementing the new legislative framework (for example, developing a new rulebook for deposit takers and managing any temporary or interim licensing regime).

- 66 To some extent these expected costs have been anticipated in the 2020-25 Funding Agreement between me and the Governor of the Reserve Bank signed in June 2020. The new agreement provides for an annual average level of operating expenditure of \$115 million over the five year period. This compares to the \$80 million budget for the 2019/20 year.

### **Legislative Implications**

- 67 The recommendations in this package of Cabinet papers will be given effect by the Deposit Takers and Depositor Protection Bill, which has a category 4 priority on the 2021 Legislation Programme (to be referred to select committee in 2021).
- 68 The Deposit Takers and Depositor Protection Act will bind the Crown.

### **Impact Analysis**

- 69 See Cabinet Paper 1: Overview for the Quality Assurance Panel's (comprising of representatives from the Reserve Bank of New Zealand, the Treasury and the Regulatory Impact Analysis Team at the Treasury) assessment of the attached Regulatory Impact Statement against the Quality Assurance criteria. The Panel considers that the Regulatory Impact Statement for the reforms in this Cabinet paper **meets** the Quality Assurance criteria.

### **Human Rights**

- 70 My officials will be working with the Ministry of Justice to ensure that any concerns relating to the New Zealand Bill of Rights Act are addressed.

### **Consultation**

- 71 The following agencies were consulted on the contents of this package of Cabinet papers: the Ministry of Business, Innovation and Employment; the Financial Markets Authority; Parliamentary Counsel Office; Inland Revenue; and the Ministry of Justice. The Department of the Prime Minister and Cabinet (DPMC) has also been informed.
- 72 Three rounds of public consultation have taken place as part of Phase 2 of the Review. The first round closed in January 2019 and received 67 submissions. A second round of consultation closed in August 2019 and received 45 submissions. The third consultation closed in October 2020 (following a six-month extension to the original deadline for submissions due to COVID-19). This consultation received 45 written submissions on the detailed design aspects of a new prudential regime for deposit takers and the introduction of deposit insurance.

*Views of the Independent Expert Advisory Panel*

- 73 The joint Treasury-Reserve Bank Review team has been supported throughout Phase 2 by an Independent Expert Advisory Panel (the Panel) chaired by Suzanne Snively. The Panel's views are provided in Paper 1.

### **Communications**

- 74 I recommend that Cabinet decisions, the package of Cabinet papers and related material will be publicly released on the Treasury and Reserve Bank websites shortly after decisions are made.
- 75 In addition I plan to announce some of the key decisions shortly after the Cabinet meeting, and the timeframe for the implementation of deposit insurance.

### **Proactive Release**

- 76 I intend to proactively release supporting material and advice (such as policy advice reports, Panel papers and presentations) relating to these recommendations.

### **Recommendations**

- 77 The Minister of Finance recommends that the Committee:

#### *Purposes and principles*

- 1 note that Phase 1 of the Review of the RBNZ Act introduced a new purpose statement to “promote the prosperity and well-being of New Zealanders and contribute to a sustainable and productive economy” and that this purpose statement will remain in the new RBNZ Act and recognises that monetary and financial policy are not ends in themselves, but are means to improve the prosperity and well-being of New Zealanders;
- 2 note that Cabinet has previously agreed [DEV-19-MIN-0345 refers] that the new RBNZ Act's financial policy objective will be to “protect and promote the stability of New Zealand's financial system”;
- 3 note that Cabinet has previously agreed [DEV-19-MIN-0345 refers] that the new RBNZ Act will require the Minister of Finance to issue a Financial Policy Remit and that the board of the Reserve Bank must have regard to it when pursuing the financial stability objective – specifically when acting in relation to the Reserve Bank's strategic intentions and the setting of prudential requirements;
- 4 agree that the purposes of the DTA will be designed to achieve the following objectives:
  - 4.1 the promotion of the safety and soundness of deposit takers;
  - 4.2 the promotion of the public confidence in the financial system;
  - 4.3 the mitigation of risks that arise to and from the financial system.



and in doing so, contribute to protecting and promoting the stability of New Zealand's financial system;

- 5 note that in addition to the general purposes in the DTA, there will be part-specific purposes (for example, the protection of depositors in the context of deposit insurance);
- 6 Agree that the Reserve Bank be required to take into account principles (to the extent they are relevant) when exercising its powers under the DTA. It is anticipated that the principles would be along the following lines:
  - 6.1 the desirability of minimising unnecessary costs of regulatory actions;
  - 6.2 the desirability of taking a proportionate approach to regulation and supervision, and ensuring that similar institutions are treated consistently while recognising the diversity of institutions;
  - 6.3 the need to maintain competition within the deposit taking sector;
  - 6.4 the value of transparency and public understanding of the Reserve Bank's objectives and how the Reserve Bank's functions are exercised;
  - 6.5 consideration of the practice by relevant international counterparts carrying out similar functions, as well as guidance and standards from international bodies;
  - 6.6 the desirability of ensuring that long-term risks to financial stability are well managed;

#### *Regulatory perimeter*

- 7 agree to confirm Cabinet's previous in-principle decision to merge New Zealand's two existing prudential regimes for regulating banks and non-bank deposit takers into a single deposit-taking regime [DEV-19-MIN-0161 refers];
- 8 agree that the DTA provide for a single, flexible licensing regime that requires deposit takers to be licensed by the Reserve Bank;
- 9 agree to an activity-based regulatory perimeter that captures as deposit takers persons carrying on the business of borrowing and lending, excluding some types of wholesale funded lenders and firms subject to existing NBDT Act exclusions and exemptions;
- 10 note that while the scope of the wholesale lender exclusion will be further tested and refined through the drafting process, it is expected to exclude lenders that solely borrow on wholesale capital markets, from financial institutions, or from associated persons;
- 11 agree that a financial service provider that is not licensed as a deposit taker may not hold itself out to be a licensed deposit taker;

- 12 agree that no financial service provider may use the words 'bank', 'banking' and 'banker' (restricted words) when carrying on activities in New Zealand except for licensed deposit takers or persons licensed or registered as a bank in a country other than New Zealand that, in each case, have been authorised by the Reserve Bank to use restricted words;
- 13 agree that the Reserve Bank will publish a policy framework under which it will authorise the use of restricted words, including setting out the minimum authorisation requirements for deposit takers (such as financial strength requirements);
- 14 agree that the disclosure, governance and trustee supervision exclusions from the Financial Markets Conduct Act that currently apply to registered banks should be extended to all licensed deposit takers;
- 15 agree that the DTA will allow the Reserve Bank to monitor, through information gathering powers, non-deposit taking lenders for financial stability risks and identify entities that should be designated as deposit takers for the purposes of the DTA;
- 16 agree that the Reserve Bank be empowered to designate an entity as a deposit taker for the purposes of the DTA where the services it provides are the same, or substantially similar, in economic substance to carrying on the business of borrowing and lending;

#### *Standards and licensing*

- 17 note Cabinet has previously agreed in-principle [DEV-19-MIN-0346 refers], subject to further policy development, that:
  - 17.1 'standards' set by the Reserve Bank will be the primary tool for imposing regulatory requirements on deposit takers, with a high degree of flexibility to tailor requirements to individual deposit takers and classes of deposit takers;
  - 17.2 the prudential framework will provide the scope of matters that the Reserve Bank will be able to set standards on, with the ability for the Minister to add additional matters to which standards can relate via regulations;
  - 17.3 requirements that impact on the rights of individuals to be provided for in primary legislation, in particular, fit and proper requirements for directors and senior executives;

#### *Scope of standards*

- 18 agree to confirm Cabinet's previous in-principle decision that the Reserve Bank be empowered under the DTA to set regulatory requirements for deposit takers by secondary legislation (prudential standards);

- 19 agree that the subject matter of prudential standards be specified in the DTA, and may encompass:
  - 19.1 the current conditions of registration;
  - 19.2 the matters listed in sections 73-73B and section 78 of the current Reserve Bank of New Zealand Act 1989;
  - 19.3 compliance with the range of matters in the Reserve Bank's Banking Supervision Handbook;
  - 19.4 the Basel Core Principles of Effective Banking Supervision; and
  - 19.5 any other matters prescribed by regulations;
- 20 note that it is anticipated that the subject matter of standards will include the matters that are to be taken into account when licensing deposit takers;
- 21 agree that the subject matter of prudential standards will include lending requirements (e.g. loan-to-value and debt-to-income ratios);
- 22 agree that the permitted scope of lending standards be set by regulation and that this will be confined to types of lending (e.g. residential mortgage, rural, commercial property);
- 23 agree that a regulation pertaining to lending standards can be made by the Governor-General by Order-in-Council on the advice of the Minister of Finance after consultation with the Reserve Bank;
- 24 agree to confirm the in-principle decision that additional matters that may be covered by prudential standards may be prescribed by regulations recommended by the Minister;
- 25 agree the DTA should allow the Reserve Bank to set reporting and lending standards in relation to categories of non-deposit-taking lenders prescribed by regulation;
- 26 note the DTA will not provide the Reserve Bank with the power to impose standards on associated persons of licensed deposit takers, except in relation to recommendation 25;
- 27 agree that standards may apply to all licensed deposit takers, specified classes of licensed deposit takers or one or more specified licensed deposit takers;
- 28 agree that the requirements imposed on a licensed deposit taker under standards may be modified by administrative instruments (e.g. licence conditions or exemptions), subject to appropriate safeguards;

### *Process for setting standards*

- 29 agree that the following procedural requirements would apply before a standard may be issued by the Reserve Bank:
- 29.1 a requirement to consult with members of the Council of Financial Regulators;
  - 29.2 a requirement to consult affected persons (except for minor amendments to standards, when consultation could be limited to substantially affected persons);
- 30 note that standards, as secondary legislation, will be subject to Parliamentary disallowance (section 115 of the Legislation Act 2019);
- 31 note the Reserve Bank of New Zealand Bill:
- 31.1 requires the Reserve Bank to assess and publish the expected regulatory impact of any policy adopted under prudential legislation, which will include the development of standards under the DTA (except of a minor or technical nature);
  - 31.2 sets requirements around the content of the regulatory impact assessment for standards, including how the Board has had regard to the Minister of Finance's *Financial Policy Remit*;
- 32 agree that there will be a statutory requirement for the Reserve Bank to inform the Minister of Finance of key policy changes, other than those of a minor or technical nature;

### *Licensing*

- 33 agree that a person will be entitled to be issued with a licence if the Bank is satisfied as to specified matters, such as the ability to comply with the DTA, applicable standards and any proposed licence conditions;
- 34 agree that the fitness and propriety of directors and senior managers of an applicant be a matter that the Reserve Bank must be satisfied of before a person is entitled to be issued with a deposit taking licence;
- 35 agree that the Reserve Bank would be required to follow appropriate procedural requirements before deciding on entitlement to a license, including consultation with the FMA;
- 36 agree that the Reserve Bank will have powers to establish licensing conditions, specific to licensed deposit takers, and that it is anticipated that licensing conditions may be used to apply to standards and relate to the licensing matters and the types of conditions that may be imposed under the Non-bank Deposit Takers Act 2013 and Insurance (Prudential Supervision) Act 2010;

- 37 agree that Reserve Bank approval be required before a person (or persons acting together) obtains a controlling interest in a licensed deposit taker;
- 38 agree that the DTA will include appropriate de-licensing powers, including the circumstances under which the licence of a deposit taker may be revoked;

*Transparency requirements*

- 39 note the Reserve Bank of New Zealand Bill requires the Reserve Bank to publish Statements of Prudential Policy in order to provide transparency about how it acts as a prudential regulator and supervisor under prudential legislation;
- 40 agree that the Reserve Bank would be required to publish in its Statement of Prudential Policy its policies in relation to how it acts, or proposes to act, in relation to its administrative decision-making, such as imposing, modifying or removing conditions of licence or granting exemptions from requirements imposed by standards;
- 41 agree that the Reserve Bank must keep a public register of licensed deposit takers, with prescribed content requirements;

*Fit and proper*

- 42 agree that the DTA provide fit and proper requirements for directors and senior managers of deposit takers in line with the fit and proper framework contained in the Insurance (Prudential Supervision) Act 2010, with any necessary or desirable modifications, for example:
  - 42.1 that the Reserve Bank's approval be required prior to the appointment by the deposit taker of a director or senior manager;
  - 42.2 that deposit takers be required to notify the Reserve Bank of significant issues that may affect the fitness and propriety of directors and senior managers as and when they occur;

*Previous decisions on liability, accountability, supervision and enforcement*

- 43 note Cabinet has previously agreed in-principle [DEV-19-MIN-0346 refers], subject to further policy development, that:
  - 43.1 accountability requirements will be enhanced for directors of deposit takers established through broad positive duties, with civil penalties as the primary sanction for non-compliance;
  - 43.2 subject to further advice from a cross-agency process separate from the Phase 2 Review, integrated prudential-conduct executive accountability regime which extends accountability requirements to include certain senior employees of deposit takers and insurers will be developed;

- 43.3 the Reserve Bank to have a power to undertake on-site inspections of any licensed deposit-taker, and any other regulated entity as appropriate;
- 43.4 the Reserve Bank to be able to issue directions to a deposit taker without Ministerial consent but subject to appropriate thresholds, and to delicense a deposit taker without a ministerial direction;
- 43.5 a more graduated enforcement and penalty framework with a broader range of potential sanctions than the current Reserve Bank Act, such as statutory public notices, infringement fees, enforceable undertakings, and civil pecuniary penalties;

#### *Director accountability*

- 44 agree that directors of licensed deposit takers will have a new due diligence duty to ensure there are adequate systems, processes and policies in place so that the deposit taker complies with its prudential obligations, and that there will be a civil pecuniary penalty for breach of this duty, subject to appropriate defences;
- 45 agree that a licensed deposit taker will not be able to insure or indemnify a director against a breach of the due diligence director duty, and that any such insurance or indemnification would be ineffective;
- 46 note that directors would be able to insure themselves personally against insurable risks (such as a civil pecuniary penalty) in their capacity as directors of a licensed deposit taker;
- 47 note that this duty will exist alongside other director duties, including fiduciary duties to the company under the Companies Act, and duties under the Financial Markets Conduct Act and Credit Contracts and Consumer Finance Act;
- 48 agree that licensed deposit takers may be liable to a civil pecuniary penalty if false or misleading information is given to the Reserve Bank or publicly disclosed and, if such a penalty is imposed on a licensed deposit taker, the directors of that licensed deposit taker will be treated as having contravened the requirement in such a case and be liable for a pecuniary penalty, subject to appropriate defences;
- 49 note that this due diligence duty may be incorporated into a future executive and director accountability regime agreed to in principle by Cabinet, to be progressed by Council of Financial Regulators agencies separately from the Review of the Reserve Bank Act;

#### *Supervisory powers*

- 50 note that the Reserve Bank will be empowered with flexible regulatory tools which can be used expeditiously and with efficacy to promote financial

stability. The extent, scope, and use of these powers will need to be clear and well justified to provide certainty and legitimacy;

- 51 note that the Reserve Bank's functions under the Reserve Bank Bill will include acting as a prudential regulator and supervisor and that the supervisory powers under the DTA can be exercised as necessary or desirable to carry out this function. The Reserve Bank will also be able to use these powers in its deposit insurance role;
- 52 agree that the Reserve Bank will have a power to gather information from financial service providers, associated persons of financial service providers, and other appropriate persons;
- 53 agree that the Reserve Bank will have a power to require a licensed deposit taker to produce a report on a matter relating to its business, operations, or management, or those of an associated person, to be carried out by a qualified person approved by the Reserve Bank;
- 54 agree that the Reserve Bank will have a power, at any reasonable time, to, without notice, enter and remain on the premises of a licensed deposit taker for the purpose of conducting an on-site inspection to carry out prudential supervision and monitor the deposit-taker's compliance with obligations imposed under the DTA;
- 55 agree that the Reserve Bank will have the power to carry out on-site inspections of insurers licensed under the Insurance (Prudential Supervision) Act 2010 comparable to the on-site inspection power for licensed deposit takers;
- 56 note that the power to conduct on-site inspections is not intended to be a search and seizure power;
- 57 agree that, during an on-site inspection, an employee, an officer or agent of a licensed deposit taker may be required to answer questions and provide any other information that may reasonably be required for the purpose of the inspection;
- 58 note that MBIE will seek the Minister of Commerce and Consumer Affairs' approval to undertake further targeted consultation on a potential on-site inspection power for the FMA, for the purpose of alignment between twin peaks regulators, with a view to seeking final policy decisions through the second tranche of DTA policy decisions;
- 59 agree that the Reserve Bank may require the production of information and appoint a qualified person to carry out an investigation into the affairs of a licensed deposit taker or associated person for the purpose of investigating conduct that constitutes, or may constitute, a contravention of an obligation imposed under the DTA;
- 60 agree that a person appointed by the Reserve Bank to investigate whether a person is contravening, or has contravened, an obligation imposed under the

DTA, may enter and search any place if the occupier of the place consents or the person obtains a warrant;

- 61 agree that licensed deposit takers be required to report to the Reserve Bank breaches of obligations imposed under the DTA;
- 62 note that the Reserve Bank will not be permitted under the DTA to compel privileged, or self-incriminatory information from individuals;
- 63 agree that information connected with the use of the Bank's powers, and derived information that a licensed deposit taker is required to provide to the Reserve Bank must be kept confidential, and only be released in prescribed circumstances;
- 64 note that the Reserve Bank will be able to share information with relevant agencies, such as the FMA, using the information sharing power in the RBNZ Bill;
- 65 note that the exercise of supervisory powers will be subject to appropriate procedural constraints, in accordance with natural justice requirements;

#### *Enforcement powers*

- 66 agree that the Reserve Bank would have a power to direct licensed deposit takers to take specified actions (for the scope of this power see Paper 4 on crisis management and resolution);
- 67 agree that the Reserve Bank have the power to make an order prohibiting the publication or communication of any information relating to the exercise of supervisory and enforcement powers under the DTA;
- 68 agree that the Reserve Bank may require the preparation and implementation by a licensed deposit taker of a plan setting out how it would avoid, mitigate or remedy a contravention, or potential contravention, of its prudential obligations under the DTA;
- 69 agree that the Reserve Bank may accept a written undertaking from any person in connection with compliance with any obligation imposed under the DTA and have the power to apply to the court to enforce the undertaking and order appropriate remedies for breach of the undertaking, including the payment of an amount up to the amount of any benefit that the person obtained that is reasonably attributable to the breach;
- 70 agree that the Reserve Bank be able to require that a licensed entity publicly display a notice or warning issued by the Reserve Bank;

#### *Penalties and offences*

- 71 agree that civil pecuniary penalties may be imposed by the court (with a civil standard of proof) for a contravention of a requirement or obligation under the DTA;



- 72 agree that the Reserve Bank may apply for a civil pecuniary penalty order against any person who has contravened, or been involved in a contravention, of a requirement or obligation under the DTA;
- 73 agree that the DTA include guidance to assist the court in determining the size of a pecuniary penalty in individual cases, including factors such as the extent of cooperation with regulators, or the recommendation of the Reserve Bank;
- 74 agree that intentional or reckless non-compliance with the Reserve Bank's supervisory and enforcement powers would be a criminal offence;
- 75 agree that the DTA include a criminal offence for intentionally misleading the Reserve Bank;
- 76 agree that the DTA provide for administrative penalties (i.e. infringement notices imposed under the procedure provided in the Summary Proceedings Act 1957) to deter conduct that is of relatively low seriousness, such as facility to supply information to the Reserve Bank;
- 77 agree that further detail of the proposed offences and penalties will be developed by the Minister of Finance under Cabinet's delegated authority provided by recommendation 6 in Paper 1, and that penalty levels would be comparable with the conduct and competition regimes and could be significant;

#### *Appeal rights*

##### *Appeals from fit and proper decisions*

- 78 agree that the decision by the Reserve Bank to not approve a proposed director or senior manager or to remove a director or senior manager be subject to appeal by the affected person to the High Court and that the appeal be by way of a rehearing;

##### *Appeals from decisions to decline a licence*

- 79 agree that the decision by the Reserve Bank to not grant a deposit taker licence be subject to appeal by the licence applicant to the High Court and that the appeal be by way of a rehearing;

##### *Appeals from decisions affecting the rights and interests attaching to deposit taking licences*

- 80 agree that decisions under the Deposit Takers Bill affecting the rights and interests that attach to deposit taking licences (i.e. conditions of licence, changes to the licence holder (approvals of change of ownership, corporate form etc) and approvals to carry on or cease carrying on certain activities) be subject to appeal on questions of law, with the decision appealed against continuing in effect until the appeal has finally been disposed of (unless the Court orders otherwise);

### *Appeals from decisions by the Resolution Authority*

- 81 note that appeal rights for decisions made by the resolution authority will be considered once the no creditor worse off framework has been confirmed, but that officials consider that appeals should likely be limited to no creditor worse off compensation;

### *Judicial review*

- 82 note that the inherent power of the High Court to review the lawfulness of a decision taken under the Deposit Takers Act will be available, including in respect of the exercise of powers for which an appeal right is not provided for in the Deposit Takers Act (e.g. powers to make secondary legislation through setting standards and exemptions or designations);

### *Associated persons*

- 83 agree that the definition of an associated person should be along the lines of that used in section 10 of the Insurance (Prudential Supervision) Act 2010;
- 84 agree that the Reserve Bank is able to require an associated person to provide the Reserve Bank's information for the purposes of the Reserve Bank prudential supervision of licensed deposit takers;

### *Miscellaneous matters*

- 85 agree that the following provisions of the Reserve Bank Act 1989 be carried across to the DTA (subject to drafting modifications):
- 85.1 Section 68A (Trans-Tasman cooperation);
  - 85.2 Section 139A – 139J (covered bonds);
- 86 agree that comparable provisions to sections 60, 62-63, and 67- 71 of the Insurance (Prudential Supervision) Act 2010 (relating to financial strength ratings) be included in the DTA (subject to necessary drafting changes or modifications);
- 87 Note that Paper 1 seeks your agreement to authorise the Minister of Finance to make further policy decisions required to finalise drafting instructions for the DTA (including matters outlined in Annex 1 of that paper) in consultation with the Associate Ministers of Finance and the Minister of Commerce and Consumer Affairs.

Authorised for lodgement

Hon Grant Robertson

Minister of Finance